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CHEE KUAT FONG & ORS

v.

LEE WAI YEN

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COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
RAUS SHARIF JCA
WAN ADNAN MUHAMAD JCA
[APPEAL NO: W-02-82-2001]

C

3 DECEMBER 2007

TORT: *Damages - Assessment - Libel - Appeal against quantum - Joint tortfeasors - Separate awards or global award - Whether award exorbitant or unreasonable - Whether appellate interference warranted*

D

The High Court, after a full trial in a libel action, found for the respondent/plaintiff and ordered all the six defendants to pay a sum of RM30,000 each by way of damages, together with interest and costs. The present appeal was lodged by five appellants/ defendants only – the second defendant did not appeal – against

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the issue of quantum awarded. The defendants contended that the trial court had erred in ordering separate awards against each of them when there should be one global award only, on the authority of *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors*.

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Held (dismissing the appeal)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) The capacities in which the defendants were sued *ie*, as separate tortfeasors in *MGG Pillai v. Tan Sri Dato' Vincent Tan*

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Chee Yioun & Other Appeals were readily distinguishable from the defendants in the instant appeal in which the defendants were sued as joint tortfeasors. The libel in the present appeal was contained in a single letter authored by all the defendants, who were in law and in fact joint tortfeasors. The facts in the

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instant appeal bore a striking similarity with those in *Liew Yew Tiam (supra)*, in which the Court of Appeal, after having considered all the circumstances of the case and adopting a common sense approach to the facts, came to the conclusion that a global sum of RM100,000 would be fair, just and

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adequate compensation for the libel inflicted by the appellants upon the respondents. Hence, in the instant appeal, the trial

court had erred in awarding separate awards for the joint tortfeasors *ie*, the defendants there. The award should have been a global award. Be that as it may, in considering the global quantum to be awarded, the total amount of RM180,000 awarded by the learned trial judge was not outrageously exorbitant, or shockingly excessive in relation to the libel, or manifestly unreasonable, unjust or irrational. Therefore, there should be no appellate interference. Apart from the variation of separate awards of damages to a global award, the total amount of RM180,000 was fair and just compensation. That amount should be affirmed. *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* (foll); *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* (dist). (paras 9, 10, 11, 12)

Bahasa Malaysia *Translation Of Headnotes*

Mahkamah Tinggi, selepas perbicaraan penuh dalam satu tindakan libel, telah membuat keputusan untuk responden/plaintif dan memerintahkan supaya keenam-enam defendan membayar gantirugi berjumlah RM30,000 tiap seorang beserta dengan faedah dan kos. Rayuan semasa difailkan oleh lima dari perayu/defendan tersebut – defendan kedua tidak merayu – terhadap isu kuantum yang diaward. Defendan-defendan berhujah bahawa, berdasarkan kepada autoriti *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors*, mahkamah bicara khilaf apabila memerintahkan award yang berasingan terhadap mereka dan tidak suatu award yang global atau menyeluruh.

Diputuskan (menolak rayuan)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Kapasiti atas mana defendan-defendan didakwa, iaitu sebagai pelaku tort yang berasingan di dalam *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* jelas dapat dibezakan dari defendan-defendan dalam rayuan semasa di mana mereka didakwa sebagai pelaku bersama tort. Libel di dalam rayuan semasa terkandung dalam sekeping surat yang ditulis oleh semua defendan-defendan sebagai pelaku bersama tort di sisi undang-undang. Fakta-fakta dalam rayuan semasa adalah amat menyerupai fakta-fakta yang terdapat dalam *Liew Yew Tiam (supra)*, di mana Mahkamah Rayuan, setelah

menimbang semua halkeadaan kes, merumuskan bahawa satu jumlah menyeluruh RM10,000 sebagai gantirugi adalah adil, patut dan mencukupi bagi libel yang dilakukan oleh perayu-perayu terhadap responden-responden. Dengan itu, dalam rayuan semasa, mahkamah bicara khilaf apabila membenarkan award-award yang berasingan kepada pelaku bersama tort, yakni defendan-defendan di sini. Award yang diberi sepatutnya satu award yang menyeluruh. Walaupun begitu, dalam menimbang kuantum menyeluruh yang harus diberi, jumlah global RM180,000 yang diaward oleh yang arif hakim bicara bukanlah sesuatu yang terlalu tinggi atau terlalu berlebihan mengambilkira libel yang dilakukan, ataupun terlalu tidak munasabah, tidak adil dan tidak rasional. Oleh yang demikian, campurtangan peringkat rayuan adalah tidak perlu. Selain dari mengubah award-award yang berasingan kepada award yang global, jumlah RM180,000 adalah pampasan yang wajar dan adil. Jumlah tersebut harus disahkan. *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* (diikuti); *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* (dibezakan).

Case(s) referred to:

Cassell & Co. Ltd v. Broome and Another [1972] 1 All ER 801 HL ***(refd)***

Green Lands Ltd v. Wilmshurst [1913] 3 KB 507 ***(refd)***

Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA ***(foll)***

Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals [2000] 3 CLJ 728 FC ***(refd)***

MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals [1995] 2 CLJ 912 CA ***(dist)***

Tan Sri Dato' Vincent Tan Chee Yioun v. Hasan Hamzah & Ors [1995] 1 CLJ 117 HC ***(refd)***

For the appellants/defendants - Andrew Ng; M/s Yeo & Yeo
For the respondent/plaintiff - Jadadish Chandra; M/s Arbain & Co

[Appeal from High Court, Kuala Lumpur; Suit No: S5-23-35-1996]

Reported by Suresh Nathan

JUDGMENT

Low Hop Bing JCA:

Appeal

[1] On 12 November 1997, after a full trial in a libel action, the learned judge of the Kuala Lumpur High Court found for the respondent-plaintiff ("the plaintiff") and ordered all the six defendants in the court below to pay a sum of RM30,000 each by way of damages, together with interest and costs.

[2] At the hearing of this appeal, both learned counsel informed this court that all the six defendants in the court below have paid RM30,000 each in satisfaction of the said judgment.

[3] The second defendant, one Mahinder Singh, who was also ordered to pay RM30,000 as damages has satisfied that judgment sum in the court below and has not lodged any appeal therefrom. This appeal was lodged by five appellants-defendants ("the defendants") only.

[4] The defendants have originally appealed against both liability and quantum. However, they have now confined the appeal to one issue only ie concerning quantum.

Libel

[5] The libel attributable to the defendants was contained in a letter authored by the defendants against the plaintiff and addressed to the defendants' managing director. Although the extent of the publication was limited, the plaintiff was nevertheless dismissed by his employer, and his claim for unfair dismissal was rejected by the Industrial Court.

Global Award

[6] Defendants' learned counsel Mr Andrew Ng contended that the trial court had erred in ordering separate awards against each of the defendants when they should be one global award only, on the authority of *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 CA.

[7] Plaintiff through learned counsel Mr. Jadadish Chandra submitted that the damages awarded separately against the defendants were not excessive.

[8] I shall first refer to *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912 CA. In the Court of first instance, the appellants and the other defendants in a libel action were ordered to pay separate sums of general damages (see [1995]1 CLJ 117). In the Court of Appeal, it was argued that the trial court had erred in making separate awards against each appellant. At p. 938, Gopal Sri Ram JCA, with whom Lamin PCA and Abu Mansor JCA (as they then were) concurred, held that all the defendants there were sued and found liable as several and not as joint tortfeasors. Thus the trial court could make separate awards against each appellant there.

[9] It is to be noted that the capacities in which the defendants were sued ie as separate tortfeasors in *MGG Pillai, supra,* are readily distinguishable from the defendants in the instant appeal in which the defendants were sued as joint tortfeasors. The libel in the instant appeal was contained in a single letter authored by all the defendants who are in law and in fact joint tortfeasors. The facts in the instant appeal bear a striking similarity with those in *Liew Yew Tiam & Ors, supra,* in which the trial court made separate awards against each appellant, as follows:

First appellant	RM 500,000.00
Second appellant	RM 300,000.00
Third appellant	RM 50,000.00
Fourth appellant	RM 150,000.00
Total =	RM1,000,000.00

[10] At p. 390, Gopal Sri Ram JCA speaking for the Court of Appeal, referred to *Cassell & Co. Ltd v. Broome and Another* [1972] 1 All ER 801 HL; and *Green Lands Ltd v. Wilmshurst* [1913] 3 KB 507, and held that only a single award was admissible against all the appellants. Hence, the Court of Appeal is entitled to interfere. At p. 395b, after having considered all the circumstances of the case and adopting a common sense approach to the facts, the Court of Appeal came to the conclusion that a global sum of RM100,000 would be fair, just and adequate compensation for the libel inflicted upon the respondents.

[11] Reverting to the facts in the instant appeal, on the basis of the judgment of the Court of Appeal in *Liew Yew Tiam & Ors, supra,* the trial court had erred in awarding separate awards for the joint tortfeasors ie the defendants there. The award should have been a global award.

[12] Be that as it may, in considering the global quantum to be awarded, I am of the view that the total amount of RM180,000 awarded by the learned trial judge is not outrageously exorbitant, or shockingly excessive in relation to the libel, or manifestly unreasonable, unjust or irrational. Therefore, there should be no appellate interference. Hence, apart from the variation of separate awards of damages to a global award, the total amount of RM180,000 is a fair and just compensation. That amount should be affirmed. (see *Ling Wah Press (M) Sdn. Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [2000] 3 CLJ 728 at p. 732 FC per Eusoff Chin CJ (Malaysia) (as he then was).

Conclusion

[13] On the foregoing grounds, this appeal is hereby dismissed with costs. There shall only be a global award of RM180,000 against all the six defendants in the court below. Deposit to the plaintiff towards account of taxed costs.